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SENT ELECTRONICALLY, BY FAX AND MAIL

January 24, 2002

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Investigation by the Department of Telecommunications and Energy on its Own Motion, Pursuant to G. L. c. 159, § 105 and G. L. c. 164, § 76 to Investigate Increasing the Penetration Rate for Discounted Electric, Gas and Telephone Service, D.T.E. 01-106

Dear Secretary Cottrell:

Enclosed for filing please find the Attorney General's Comments in the above referenced matter. Thank you for your assistance.

Sincerely,

Joseph W. Rogers
Division Chief, Utilities Division

cc: Service List

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G. L. c. 159, § 105 and G. L. c. 164, § 76 to investigate increasing the penetration rate for discounted electric, gas and telephone service

COMMENTS OF THE ATTORNEY GENERAL

I. INTRODUCTION

On December 17, 2001, the Department of Telecommunications and Energy (“Department”) opened this docket with the purpose of increasing the penetration rate for discount programs available to eligible low-income customers for gas, electric and telephone service. The Department indicated that it seeks to (1) minimize barriers in determining subscriber eligibility and (2) ensure that eligible customers are enrolled in available discount programs.

The Department has requested comments on certain issues concerning the effectiveness of the current outreach programs and enhancing enrollment procedures for eligible customers. The Attorney General submits his comments and his responses to the specific issues as requested by the Department.

II. DISCUSSION

A. BACKGROUND

As a matter of public policy, electric, gas and telephone service are a “basic necessity of life in modern society.” See *Western Massachusetts Electric Company*, D.P.U. 87-260, p. 178 (1988)(electric service); *Boston Gas Company*, D.P.U. 88-67, p. Page 242 (1988) (gas service); the Federal Telecommunications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq. The Department has determined that rigid application of cost-based ratemaking principles should not “jeopardize the ability of those with poverty-level incomes to retain [utility service].” *Western Massachusetts Electric Company*, D.P.U. 87-260, p. 178. Therefore, the Department determined that “[a] subsidized rate for low-income individuals should be available if the impact of the subsidy on nonparticipants is reasonable.” *Id.*

The Legislature reaffirmed this public policy in the Electric Industry Restructuring Act. General Laws chapter 164, § 1 (F)(4)(i) requires that the Division of Energy Resources (“DOER”) develop “eligibility guidelines” and that each distribution company “shall conduct substantial outreach efforts to make said low-income discount available to eligible customers.” Any customer of record whose gross household income does not exceed 175 percent of the federal poverty level is eligible for discounted rates. *Id.*

B. RECOMMENDATIONS

The Attorney General commends the Department’s effort to increase enrollment in the low-income rate programs and shares the Department’s goal to minimize barriers in determining subscriber eligibility. The low enrollment figures for the low-income rates demonstrate the need

for a computerized enrollment process and additional customer outreach.¹

There are a number of outreach efforts that can be easily adopted and will likely result in increased enrollment. Customer education is the most important factor in increasing enrollment. Second, the Low-Income Home Energy Assistance Program (“LIHEAP”) model is the most efficient computerized enrollment process that can be easily adopted without substantial cost.² Finally, after consideration of the Comments received, the Department should establish a working group to propose procedures for developing final uniform guidelines to increase penetration and facilitate enrollment.

C. RESPONSE TO DEPARTMENT QUESTIONS

Question 1. Describe outreach efforts to identify eligible discount customers.

Response:

Existing outreach efforts

Each distribution company should describe its own outreach efforts. In addition, although each distribution company currently has some information about discount rates on its website, some sites have presented the discount rate simply as one rate among many. Others have located the information so that a visitor to the website would first have to know that a discount rate was available before they would find it. Each distribution company should have a

¹ DOER estimates that only 27% of eligible households were receiving the electric discount rate in 1999. *DOER Electric Discount Rate Outreach and Eligibility Report: Findings and Recommendations, Winter 2001/2002*, p. 3.

² Funded through the U.S. Department of Health and Human Services, the LIHEAP Program assists low-income individuals and families with the cost of heating their homes during the winter season. The Program is managed by the Commonwealth’s Department of Housing and Community Development (“DHCD”) in conjunction with 22 regional nonprofit and local government organizations.

distinct link on its home page that takes you to a separate page which provides information about the discount rate in plain, simple, clear and concise language (not tariff language).³ The company should list eligibility guidelines clearly, so that a potential recipient knows exactly what to do in order to receive the benefit of the discount.

Each distribution company should have Financial Hardship Forms that clearly list the income eligibility levels and that notify the customer of the availability of a low-income discount. The returned form should be considered an application for the discount rate. Not only customer service representatives, but all company personnel dealing with the public, should be informed on an annual basis about the eligibility guidelines for the Discount Rate. Offering information about the rate should be part of every conversation with consumers experiencing financial hardship.

Additional outreach efforts

Every distribution company should produce a brochure about the rate, which is clearly written, attractive to the eye, and updated annually. Those brochures should go in bulk to local elderly programs, welfare agencies, etc. With permission, they could also be placed at local clinics, hospitals, variety stores, laundromats, etc., particularly those in low-income neighborhoods. When DOER prepared Discount Rate Eligibility Guidelines in December 1998, it suggested providing schools and summer camps with information on the discount rate. It also suggested coordination between electric distribution companies to have imprinted notices on the back of cash register receipts, quarterly distribution of bill inserts explaining the eligibility for discount rates, and imprinting the bill envelope containing the insert with a statement indicating

³ Given the population that likely falls within the income guidelines, the Department should consider requiring that this information to be made available in non-English languages as well.

that there was information enclosed about discounted electricity rates. Most of these suggestions have not been fully implemented and the Department should order immediate compliance.

Distribution companies should inform each house of worship in their service territory about the discount rate by personal letter. The distribution companies should update and send this letter annually. Personal contact with the house of worship officials should be initiated, and brochures for distribution could be offered. Many houses of worship publish weekly parish newsletters and some would be willing to remind members, especially at the beginning of the heating season, that discounted rates are available for gas, electric and telephone customers.

There should be outreach to house of worship workers, social service agencies (including the Salvation Army, Good Neighbor Energy Fund) and charitable foundation staff concerning eligibility requirements and a request that they inform the recipients of their assistance of the low-income discount rate programs. Social service staff should receive minimal training from the company in application procedures, so that when a consumer requests financial assistance, the worker will be able to assist the consumer to submit an application immediately.

Question 2. Describe current procedures used for subscriber eligibility verification and enrollment.

Response:

Each distribution company should describe the current procedures it uses to verify subscriber eligibility and how consumers are then enrolled, since there may be differences among companies. Distribution companies have chosen to supply postcards to public agencies offering assistance; the agencies mail the postcards to clients; the company pays for the postage. The postcard notifies clients of their eligibility for a discount rate and provides simple application instructions for its return. The utility processes the application, but it is unclear when

the effective date for the low income rate begins: the date the postcard was mailed, the date it is received by the utility, or the date when the processing is complete.⁴

A more efficient procedure, however, is an automated program of matching customers' accounts with recipient lists. Currently the LIHEAP program uses an automated model, in which the recipient gives written consent as part of the application for fuel assistance, and the consent allows LIHEAP to distribute otherwise confidential information. LIHEAP notifies the distribution companies providing the primary heat source (mostly oil and gas distribution companies) and the secondary fuel providers (usually electric distribution companies) electronically of the recipient's eligibility. Since eligibility for LIHEAP is capped at 200% of the federal poverty level figure, and eligibility for the low-income rate is capped at 175% of the federal poverty level figure, LIHEAP separates the 200% recipients so that distribution companies can have no doubt about which customers should be placed on the low income rate. As soon as the distribution companies receive the information from LIHEAP, customers should be placed on the discount rate retroactively to the date when the LIHEAP program commenced.

Question 3. Discuss whether current subscriber eligibility standards would permit utilities to enroll each others' customers in discount programs.

Response:

LIHEAP already provides companies with information electronically about the eligibility of customers for fuel assistance. The information provided by LIHEAP prompts the distribution companies that the customer is eligible for the discount rate and should be placed on that rate without delay.

⁴ Any final guidelines should require that the customer is to be placed on the low-income rate retroactive to the date upon which the company first received notice of eligibility. In the case of LIHEAP, eligibility should begin with the inception of the program.

Since eligibility standards should be uniform for each distribution company, the standards should have no effect on the ability of utilities to enroll each others' customers in discount programs. The customer's right to privacy, however, must be assured. The consent of the customers must be obtained by the companies before they could enroll each other's customers in discount rates.⁵ The enrolling company should clearly explain the process to customers and obtain a written release allowing enrollment in other utility discount rate programs.

However, it seems possible that if the information came from a central agency, such as the Department of Transitional Assistance or the Fuel Assistance Program (LIHEAP), and if that agency shared the information only among Massachusetts gas, electric and telephone utilities for the purposes of enrollment and never shared it with any other entity, then utilities should be required to enroll each others' customers in discount programs. In addition, the Department would have to ensure that utilities receiving the information could not share credit information, payment history or other non-essential information. Consumers should be reassured that only the minimum of information would be shared (only that necessary to verify eligibility) and that confidential information would remain confidential.

⁵ ACTUAL WORDING FROM LIHEAP CONTRACTS

*I authorize the **AGENCY** to provide my heating company/utility and my secondary energy company/utility with information concerning my Fuel Assistance application if this could result in a discounted heating/energy bill.*

*I further authorize the **AGENCY** to share my name and address, identifying me as a Fuel Assistance recipient, with my telephone, water and other supplier/company/utility if this could result in a discount or other benefit from the supplier/company/utility. The **AGENCY** may also request that I supply account number information for this purpose.*

Each agency has this in the body of the application

Question 4. Discuss strategies for addressing varying income requirements of public benefit programs.

Response:

Although there is a great deal of difference among various public benefit programs, however, these differences in income requirement need not be a barrier. LIHEAP, one of the few programs with a cap higher than the low income rate, separates out the clients at the higher income level, effectively removing the possibility that ineligible customers could be placed on the rate. The vast majority of public benefit programs are capped at levels below the 175% poverty level, so that information that a customer is eligible for assistance is adequate notice to place the customer on the discount rate. The Electricity Restructuring Act lists a significant number of assistance programs which would determine eligibility for discount rates. The Act makes the discount rates of electric distribution companies available to low income customers in receipt of any “means-tested public benefit” or eligibility for the LIHEAP program. Utilities should only need confirmation that a customer is receiving a public benefit, like those listed in the Act, or is eligible for LIHEAP, without any additional concern about eligibility.

Question 5. Discuss whether utilities could implement a computer matching program to verify subscriber eligibility and enroll eligible customers in discount programs.

Response:

Even though distribution companies have the option of verifying subscriber eligibility through computer matching options, they have preferred to use a postcard method. If the Department required companies to implement a computer matching program, it would streamline what is currently an uneven, irregular process—slightly different for each company, slightly different for each public assistance program. The LIHEAP model is the most effective

enrollment method in use.

However, there is more than one way to enroll customers. First, customers who submit a completed financial hardship form to the utility should be placed on the discount rate upon receipt of the form. Utilities who wish to verify information may then submit the consumer's name to the assistance programs the consumer indicated on the Financial Hardship Form for verification. If the form includes written consent to share information, the subscriber's name could be sent to other utilities in the service territory to be enrolled in that utility's discount rate.

Currently, the customer who is eligible waits until eligibility is verified before being placed on the discount rate. In many cases the delay is considerable and there is no incentive for the utility to speed up the process. If the situation were reversed and the consumer was placed on the rate while awaiting verification, the utility might be encouraged to speed up the verification process.

Question 6. Discuss whether any legal impediment exists to enrolling eligible customers in all available discount programs.

Response:

The only impediment might be the customer's right to privacy. With appropriate planning, however, it can be addressed initially so that the difficulty no longer exists. A signed agreement by the customer at the very beginning, as well as the ability to opt-out of any process that violates the customer's need for privacy, would alleviate privacy concerns.

Question 7. Discuss privacy concerns related to electronic sharing of financial or other confidential information.

Response:

The LIHEAP model seems to have adequately addressed privacy concerns. In addition, the LIHEAP is not a commercial enterprise, but a program that offers the consumers financial

assistance and as such would be viewed much more favorably by consumers than any utility or telephone company. As a result, the Attorney General believes that it is inadvisable to use a private entity as a program administrator. LIHEAP has the knowledge and experience.⁶

Respectfully submitted,

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By: _____

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⁶ The State of New York has implemented a computer matching program which includes Verizon, certain other gas/electric companies and the Fuel Assistance Program (called HEAP) administered by the State of New York. The Office of Temporary and Disability Assistance in New York (the equivalent of the Department of Transitional Assistance in Massachusetts) is the program administrator. It matches the customer lists of Verizon, Citizen's Energy etc. against its own client list and provides the matching names to the utilities offering tariffed discount rates and customers are enrolled automatically. The FCC also reports that New York mandates the exchange of computer files between social service agencies and, thus, obtains automatic enrollment in discount rate programs such as Lifeline.